IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

CIVIL REVISION PETITION No.3542 OF 2018

Between:

R. Venkataramana Reddy, Son of R. Subba Reddy,
Aged about 62 years, Rtd. MPDO,
R/o. D.No.31/95/122, Teachers Colony,
Punganur town, Chittoor District

… PETITIONER

AND

1. R. Radha Krishna Reddy, son of R.Narayan Reddy,
Aged about 58 years, Advocate,
R/o. D.No.2/2-12/6/A, Flat No.202, Krishna Teja Residency,
Sivam Road, Ahobilam Math Lane, Durgabai Desh Mukh Colony,
Hyderabad and 6 others

... RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 27.11.2019

SUBMITTED FOR APPROVAL:

HONOURABLE SRI JUSTICE M. VENKATA RAMANA

1. Whether Reporters of Local Newspapers May be allowed to see the order? Yes/No

2. Whether the copy of order may be Marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to See the fair copy of the order? Yes/No

M.VENKATA RAMANA,J

***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HONOURABLE SRI JUSTICE M. VENKATA RAMANA**

+ C.R.P.No. 3542 OF 2018

% Dated:27.11.2019

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... RESPONDENTS

! Counsel for appellant : Ms. V. Santhi Sree

^Counsel for Respondents : Mr. Raja Reddy Koneti

<GIST:

>HEAD NOTE:

? Cases referred:

1. AIR 2003 SUPREME COURT 4548
2. AIR 1961 SC 1655
3. AIR 1962 AP 398
4. 2017(6) ALD 300
5. AIR 2000 AP 167
6. AIR 1938 Madras, 938

THE HON'BLE SRI JUSTICE M.VENKATA RAMANA

CIVIL REVISION PETITION No.3542 OF 2018

ORDER:

The short point involved in this matter is in respect of Ex.A1 marked at the trial on behalf of the plaintiff in the suit.

Fact situation and contentions:

2. Ex.A1 describes itself as a partition agreement of movables. But, its recitals also refer to immovable properties apart from movables. (A copy of Ex.A1 is made available by the learned counsel for the petitioner during course of hearing in this Revision Petition). It is prepared on stamp papers worth Rs.5/-. It is setting out a family arrangement, according to the petitioner, entered into on 04.10.1985 among all the members of the joint family, consisting of the petitioner and all the respondents.

3. The petitioner is the plaintiff. He laid the suit for partition and for division of the plaint schedule properties. All the respondents are the defendants. Ex.A1 was introduced and admitted in evidence through P.W.1 on 21.02.2018, who is none other than the petitioner. When evidence was so let in, according to the 1st respondent, the members of the Bar were on strike and did not attend the Court. Thus, it is version of the 1st respondent that in their absence and of their Advocate, it was permitted to be let in, in evidence, through P.W.1.

4. An objection was raised, on behalf of the respondents through the first respondent(2nd defendant), as to admissible nature of this document, not only on the ground that it is insufficiently stamped, but also for want of registration in terms of Section 17(1)(b) of Registration Act. It is also the contention of the 1st respondent that as before as 24.04.2017, a written objection was filed in the trial Court bringing to its notice as to inadmissible nature of Ex.A1 and inspite of it, it was permitted to be marked on 21.02.2018.

5. Stating so among other grounds, the 1st respondent filed I.A.No.112 of 2018 in the suit in O.S.No.51 of 2012 on the file of the Court of learned II Additional District Judge, Chittoor, Madanapalle, under Order-13, Rules 3 & 4 CPC, to de-exhibit Ex.A1.

6. However, the petitioner resisted such an attempt of the 1st respondent mainly on the ground that once a document is marked and is made a part of material record as well as evidence on his behalf, it is not open to recall the same. A reference is also made to CRP No.1793 of 2018 preferred by the first respondent on the file of this Court against the orders in admitting Ex.A1 on 21.02.2018 in evidence through PW1. This CRP was dismissed as withdrawn giving liberty to the 1st respondent to take appropriate steps, by an order dated 16.03.2018. The petitioner further stated that, after carefully examining the nature of the document, the above document was received subject to proof and relevancy by the trial Court and thus it was marked on his behalf. Thus, asserting that Ex.A1 is perfectly admissible in evidence in the suit for partition, to prove collateral facts in terms of Section 49 of Indian Registration Act, it is stated for the petitioner that once the document is marked, it cannot be de-exhibited.

7. Request of the 1st respondent to de-exhibit Ex.A1 in I.A.No.112 of 2018 was allowed by an order dated 18.04.2018 by the trial Court.

8. The petitioner is impugning this order, now, in this Civil Revision Petition.

9. Contentions are advanced on behalf of the petitioner and on behalf of 1st respondent on similar lines in this revision petition.

10. Now, the point for determination is-“Whether de-exhibiting Ex.A1 is proper on the ground that it is suffering on account of insufficient stamp duty and being barred of Section 17(1) of the Indian Registration Act?

Point:

11. The foremost reason asserted by the 1st respondent for this purpose is that this document was permitted to be introduced in evidence in their absence, through P.W.1 on 21.02.2018, when Advocates were boycotting the courts. However, as seen from the order under revision, surprisingly, the learned trial Judge did not record any observations referring to the circumstances under which Ex.A1 was marked through P.W.1. Boycott of Courts by Advocates on account of strike or for any other reason, cannot be deemed appropriate or just. It cannot be the basis to seek relief in any matter, particularly, with reference to letting in evidence by the parties. Therefore, it cannot be a ground whatever be the reason, which the first respondent can set up for the present purpose.

Sections 35 and 36 of the Indian Stamp Act- Extent of application- Effect

12. Section 35 of the Indian Stamp Act bars any instrument being admitted in evidence for any purpose. For facility, it is desirable to extract the same here under:

> ***"Instruments not duly stamped inadmissible in evidence, etc:-*** *No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:*
>
> *Provided that—*
>
> *(a) any such instrument shall be admitted in evidence on payment of the duty with which the same is chargeable, or, in the case of an instrument insufficiently stamped, of the amount required to make up such duty, together with a penalty of fifteen rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds fifteen rupees, of a sum equal to ten times such duty or portion;*
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> *(b) where any person from whom a stamped receipt could have been demanded, has given an unstamped receipt and such receipt, if stamped would be admissible in evidence against him, then such receipt shall be admitted in evidence against him, on payment of a penalty of three rupees by the person tendering it;*
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> *(c) where a contract or agreement of any kind is effected by correspondence consisting of two or more letters and any one of the*

letters bears the proper stamp, the contract or agreement shall be deemed to be duly stamped;

(d) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court, other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898;

(e) nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government, or where it bears the certificate of the Collector as provided by section 32 or any other provision of this Act."

13. It is desirable to extract Section 36 of Indian Stamp Act also hereunder.

"Admission of instruments where not to be questioned:-

Where an instrument has been admitted in evidence, such admission shall not, except as provided in Section 61, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped."

14. Therefore, the requirement in terms of Section 36 of Stamp Act is that an objection should be raised when such instrument is firstly and formally introduced in evidence and before it is admitted. It is an imperative means, in as much as Section 36 of Indian Stamp Act provides for a bar to question any such instrument once admitted in evidence, on account of application or otherwise of Section 35 of Indian Stamp Act.

15. The fact situation as discussed supra makes out that Ex.A1, though insufficiently stamped was already admitted in evidence. Whatever be the reasons for the 1st respondent, whereby they could not raise any objection as to such introduction, it is manifest from the record that it has been admitted in evidence. It is a part of material record in the suit.

16. The effect of omission or rather inaction to raise such an objection at appropriate time and stage has been clearly explained in ***R.V.E.Venkatachala Gounder V Arulmigu Visweswaraswami and V.P***

Temple and another[1]. This decision is relied on for the petitioner. Relevant observations in this ruling are in paragraphs 20 to 22:

> *20. The learned counsel for the defendant-respondent has relied on The Roman Catholic Mission Vs. The State of Madras & Anr. AIR 1966 SC 1457 in support of his submission that a document not admissible in evidence, though brought on record, has to be excluded from consideration. We do not have any dispute with the proposition of law so laid down in the above said case. However, the present one is a case which calls for the correct position of law being made precise. Ordinarily an objection to the admissibility of evidence should be taken when it is tendered and not subsequently. The objections as to admissibility of documents in evidence may be classified into two classes:- (i) an objection that the document which is sought to be proved is itself inadmissible in evidence; and (ii) where the objection does not dispute the admissibility of the document in evidence but is directed towards the mode of proof alleging the same to be irregular or insufficient. In the first case, merely because a document has been marked as 'an exhibit', an objection as to its admissibility is not excluded and is available to be raised even at a later stage or even in appeal or revision. In the latter case, the objection should be taken before the evidence is tendered and once the document has been admitted in evidence and marked as an exhibit, the objection that it should not have been admitted in evidence or that the mode adopted for proving the document is irregular cannot be allowed to be raised at any stage subsequent to the marking of the document as an exhibit. The later proposition is a rule of fair play. The crucial test is whether an objection, if taken at the appropriate point of time, would have enabled the party tendering the evidence to cure the defect and resort to such mode of proof as would be regular. The omission to object becomes fatal because by his failure the party entitled to object allows the party tendering the evidence to act on an assumption that the opposite party is not serious about the mode of proof. On the other hand, a prompt objection does not prejudice the party tendering the evidence, for two reasons: firstly, it enables the Court to apply its mind and pronounce its decision on the question of admissibility then and there; and secondly, in the event of finding of the Court on the mode of proof sought to be adopted going against the party tendering the evidence, the opportunity of seeking indulgence of the Court for permitting a regular mode or method of proof and thereby removing the objection raised by the opposite party, is available to the party leading the evidence. Such practice and procedure is fair to both the parties. Out of the two types of objections, referred to hereinabove, in the later case, failure to raise a prompt and timely objection amounts to waiver of the necessity for insisting on formal proof of a document, the document itself which is sought to be proved being admissible in evidence. In the first case, acquiescence would be no bar to raising the objection in superior Court.*
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> *21. Privy Council in Padman and Others vs. Hanwanta and Others [AIR 1915 PC 111] did not permit the appellant to take objection to the admissibility of a registered copy of a will in appeal for the first time. It was held that this objection should have been taken in the trial court. It was observed:*

[1] AIR 2003 SUPREME COURT 4548

> *"The defendants have now appeal to the Majesty in Council, and the case has been argued on their behalf in great detail. It was urged in the course of the argument that a registered copy of the will of 1898 was admitted in evidence without sufficient foundation being led for its admission. No objection, however, appears to have been taken in the first court against the copy obtained from the Registrar's office being put in evidence. Had such objection being made at the time, the District Judge, who tried the case in the first instance, would probably have seen that the deficiency was supplied. Their lordships think that there is no substance in the present contention."*

17. In paragraph 20 of the above ruling their lordships have clearly drawn distinction as to nature of objections with reference to admissibility of documents, classifying into two. One is, in respect *per se* inadmissible nature of the document and another is, in respect of procedure viz., the mode of proof of a document sought to be introduced in evidence. While Section 35 of the Stamp Act provides a bar for a document to be admitted in evidence if it is not properly stamped, Section 36 speaks of impact and effect of admission of the same document in evidence, though it did not meet the requirements under Section 35 of the Stamp Act. Thus, Section 36 of the Stamp Act is also substantive in nature. Therefore, once a document is admitted in evidence despite suffering on account of deficiency in relation to Stamp Act, it cannot be recalled to its original status.

18. Effect of Section 36 of the Stamp Act is reflected in Para-7 of ***Javer Chand and Ors.Vs.Pukhraj Surana***[2] as under:

> "7. That section is categorical in its terms that when a document has once been admitted in evidence, such admission cannot be called in question at any stage of the suit or the proceeding on the ground that the instrument had not been duly stamped. The only exception recognised by the section is the class of cases contemplated by s. 61, which is not material to the present controversy. Section 36 does not admit of other exceptions. Where a question as to the admissibility of a document is raised on the ground that it has not been stamped, or has not been properly stamped, it has to be decided then and there when the document is tendered in evidence. Once the Court, rightly or wrongly, decides to admit the document in evidence, so far as the parties are concerned, the matter is closed. Section 35 is in the nature of a penal provision and has far-reaching effects. Parties to a litigation, where such a controversy is raised, have to be circumspect and the party challenging the admissibility of the document has to be alert to see that the document is not admitted in evidence by the Court. The Court has to judicially determine the matter

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[2]. AIR 1961 SC 1655

as soon as the document is tendered in evidence and before it is marked as an exhibit in the case."

19. Judicial determination of admissibility of document, within purview of Section 35 and Section 36 of the Stamp Act is referred in the above ruling of Supreme Court, observing that the Court admitted the document in evidence, when it is tendered in evidence, under the signature of the Presiding Judge of the Court. The requirement appearing in this context is a conscious and perceptible consideration of the nature of the document particularly having regard to the effect of Section 35 and 36 of Stamp Act. In this context, it is desirable to bear in mind the observations of Sri Justice P.Satyanarayana Raju in ***Mantrala Simhadri Vs. Palli Varalakshmi and Ors.***[3] as to what shall be the process of judicial determination in respect of a document exhibited in the course of trial or enquiry in the Court and it is extracted below.

> *"6. …. in the case of a judicial proceeding which is required to be reduced to writing, the record made by the Judge furnishes authentic evidence of what he intended to do and in applying the provisions of Section 36 of the Stamp Act, the Court should have regard to what has been actually done and not to the unexpressed intentions of the Judge. The Judge might have intended to reject the document, but if in fact he had not rejected it, but admitted it in evidence, it must be acted upon at all the subsequent stages of the litigation….."*

20. In ***A.P. Laly vs. Gurram Rama Rao***[4], relied on for the 1st respondent, a petition of the nature to de-exhibit a document is held permissible even though the document is already marked. The effect of Section 36 of Stamp Act is also considered in this ruling in given facts, observing that any objection there under pales to insignificance. ***Javer Chand V Pukhraj Surana is*** referred in Para-23 of this ruling, observing that it was so held basing on the endorsement made on the document as admitted in evidence under the signature of the Court. Order-13, Rule 4(d) CPC requires that the document so admitted shall bear a statement having

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[3]. AIR1962AP398
[4] .2017(6) ALD 300

been so admitted by an endorsement, signed or initialled by the Judge. Therefore, when once a document or instrument is admitted in evidence, upon marking it as an exhibit, it is an invariable and an inviolable necessity to follow Order-13, Rule-4 CPC. Therefore, the decision of Hon'ble Supreme Court in *Javer Chand* cannot be construed on such score.

21. A careful reading and understanding of rulings of Hon'ble Supreme Court in ***Javer Chand V Pukhraj Surana*** *and* ***R.V.E.Venkatachala Gounder*** leave no manner of doubt that the bar under Section 36 of Stamp Act in respect of an instrument, once admitted in evidence, stands. It did not and cannot pale to insignificance. Once a document admitted in evidence it gets insulated thereunder , from the operation of Section 35 of the Stamp Act, subject to exception laid down in Section 36 itself.

22. Added to it, the nature of prohibition contemplated under Section 36 of Stamp Act should be borne in mind. Indian Stamp Act itself is a fiscal enactment. By its very nature it does not admit any other interpretation except strictly following its letter and spirit. In ***B. Ratnamala Vs. G. Rudramma***[5], in this context it was observed by Division Bench of then High Court of Andhra Pradesh at Hyderabad at Para-9 as follows:

> *"9. While considering the provisions of the Indian Stamp Act, it has to be borne in mind that the said Act being a fiscal statute, plain language of the section as per its natural meaning is the true guide. No inferences, analogies or any presumptions can have any place."*

23. When the bar to question an instrument, once admitted in evidence is so absolute in terms of Section 36 of Stamp Act, having regard to the nature of this enactment (Stamp Act) it is neither permissible to interpret its provisions in any other manner than what they convey and signify. Language of Section 36 of Stamp Act did not permit any elasticity nor it is malleable. It cannot be stretched to such an extent, importing what is not

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5. AIR2000AP167

stated in it, to make this provision completely nugatory. It has its own effect. It also provides for collection of stamp duty including penalty on an instrument, taking recourse to Section 61 of Stamp Act. Therefore, no new device can be deployed by procedural means or adaptation.

Procedural applications and implications- Effect:

24. Order 13 Rule 3 C.P.C can never provide a device or an instrument to render the effect of Section 36 of Stamp Act otiose. This bar is absolute in intent, purpose and object. It prevails in all circumstances. Hence, a document or an instrument once admitted in evidence, in such an unambiguous and clear environment at the trial, it is not correct to state that such document or instrument is inadmissible in evidence, calling for application of Order-13, Rules 3 & 4 CPC.

25. In ***A.P. Laly V Gurram Rama Rao*** referred to above, predominant procedural consideration is based on application of Order 13 Rule 3 and 4 C.P.C. amongst others. Endorsements on the documents admitted in evidence so provided under Rule 4 of Order 13 C.P.C, cannot be treated as mere instances of mechanical application. They do have a purpose and an object. What is the effect of document once it is admitted in evidence in a civil suit, cannot and need not be confined, to Rule 4 of Order 13 C.P.C.

26. There is no necessity to search anywhere, to understand the purpose and meaning of these endorsements on the documents. The reason is that Rule 7 of Order 13 C.P.C provides a clear and complete answer. It states that once a document is admitted in evidence or a copy thereof, where its copy is substituted for the original under rule-5, it shall form part of the record of the suit. When once it forms a part of the material record in the suit and as a part of evidence adduced by the party in support of his or her contention, in the guise of a device under Order 13 Rule 3 C.P.C, the document so admitted in evidence, cannot be tinkered with. Admissible nature of the document subject to exceptions stated above, remains as

such. It becomes a part of material record in a suit and shall be construed for all purposes, as such. Legal effect as to probative value of the document so admitted in evidence, in given factual context is open for consideration, by the Court, in any eventuality.

27. A reference to Bopanna Prakasam Vs. Maganti Nagabhushanam[6] is desirable, in this context. The significance of the procedure followed in admitting a document under Order 13, Rule-4 CPC vis-à-vis Section 36 of Indian Stamp Act and how a judicial proceedings in that respect shall be construed is stated in Para-6 of this Judgment of Madras High Court. It is extracted hereunder:

> *"6.To my mind the question for decision is not whether the person who initialled the endorsement is the clerk or the District Munsiff but the question is whether the document has been admitted in evidence. The words of Section 36 are clear. It does not explicitly say that there must be a judicial determination of the question in the sense the expression has been explained in some of the judgments. What it says is simply it must be admitted in evidence and if it is admitted in evidence as laid down in the rules of the Civil Procedure Code, the plain meaning of the words is satisfied. It may be said that such admission would lead to this, that a mere mechanical act of admission would amount to an admission of a document within the meaning of Section 36. I can quite see the force of this argument. But I have no doubt that the legislation when it enacted the law in Section 36 was quite alive to this position and it seems to me that the words " admitted in evidence " were deliberately used in order to avoid complicated enquiries regarding the admission and the difficulties necessarily attendant upon such enquiries. One finds in one's experience that questions of this kind are raised in promissory note suits which admittedly should be disposed of as quickly as possible and the policy of law as indicated in the section is to allow admission of documents which have been admitted under the rules of the Civil Procedure Code"*

28. Effect of an instrument or a document admitted in evidence once taken as a part of material record should also be considered in this context. If by the device under Order 13 Rule 3 C.P.C, if it is sought to be excluded from consideration, it amounts to prejudging the matters before conclusion of the trial. Law does not permit eschewing or rejection of evidence at the threshold or in the course of trial. A fair trial requires

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[6]. AIR 1938 Madras, 938

consideration of evidence, being let in by both the parties in proper perspective.

29. Therefore, for the above reasons, I respectfully differ from views expressed in ***A.P. Laly v Gurram Rama Rao*** by one of the learned Judges of then composite High Court of A.P at Hyderabad.

30. The other two judgments relied for the petitioners ***Smt.Aruna Sagar and others V M/s.Shrushti Infrastructure Corporation and others***[7] and ***Boggavarapu Narasimhulu V Sriram Ramanaiah and others*** relate to different factual context. They considered the circumstances when objections were raised before the instrument was introduced in evidence.

Sec. ***17(1)(b) of the Registration Act- Effect***:-

31. With reference to application of the prohibition under Section 17 (1)(b) Registration Act, the consideration stands on a different footing. In the sense, when an instrument suffers from such vice, it is inadmissible in evidence. It is an absolute bar, save, as otherwise provided under Section 49 of the Registration Act. There cannot be any concession or consolation. Even when such document is admitted in evidence, in view of the above stated authority of the Hon'ble Supreme Court in *R.V.E.Venkatachala Gounder,* the objection stands in terms of Registration Act. It can be raised at any stage including in appeal or revision.

32. In respect of Ex.A1, it is right to state that the Court is required to consider the objection under Section 17(1)(b) of Registration Act. However, with reference to such objection nature of recitals in the document must necessarily be considered. Ex.A1 is stated to be a partition instrument, which according to the petitioner did not attract such bar. The 1st respondent contended that its very recitals make out an out and out partition of movable and immovable properties belonging to the joint family. Since the bar under Registration Act can be considered at any

[7] 2016 (5) ALT 133

stage by the Court, it is desirable that the same be considered at the stage of final arguments, in as much as there are certain exceptions in respect of application of Section 17 of the Registration Act, which the petitioner intends to rely on.

Conclusion:-

33. Therefore, on a careful consideration of the entire material, it is difficult to accept the contention of the 1st respondent. Learned trial Judge has recorded certain findings relating to nature of this document in the impugned order. It is desirable to leave this question open in respect of bar under Section 17 of the Registration Act for the parties to raise at appropriate stage in the suit. Therefore, the order under revision requires be interfered with finding that it suffers from a serious irregularity and in appropriate application of law.

34. In the result, C.R.P.No.3542 of 2018 is allowed. The order of the Court of learned II Additional District Judge, Madanapalle in I.A.No.112 of 2018 in O.S.No.51 of 2012, dated 18.04.2018, is set aside. The respondents (defendants) are at liberty to raise an objection in the course of the suit proceedings, as to admissibility or otherwise of Ex.A1 for want of registration in terms of Section 17(1) of Registration Act, if it is open or otherwise permissible. The trial Court shall consider such objection in the final arguments in the suit after both parties let in evidence. No costs. Interim order if any, stands vacated.

Miscellaneous petitions pending, if any, in this Civil Revision Petition shall stand closed.

JUSTICE M.VENKATA RAMANA

Date: 27.11.2019
RJS

THE HON'BLE SRI JUSTICE M.VENKATA RAMANA

CIVIL REVISION PETITION No.3542 OF 2018

DATE : 27.11.2019

RJS